

1997

Julia L. Whetman v. John D. Whetman : Brief of Appellee

Utah Court of Appeals

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G. Scott Jensen; Attorney for Defendant/Appellant.

Tom D. Branch; Mark P. Hegerman; Attorneys for Plaintiff/Appellee.

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970642 CA

IN THE UTAH COURT OF APPEALS

JULIA L. WHETMAN (LEISHMAN)

Plaintiff/Appellee,

vs.

JOHN D. WHETMAN,

Defendant/Appellant.

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Civil No. 970642 CA
Priority No. 15

BRIEF OF APPELLEE

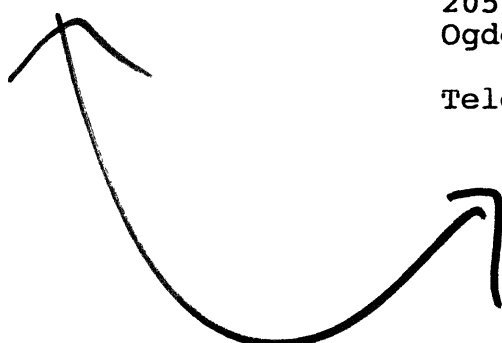
On appeal from a bench trial in the Second Judicial
District Court for the State of Utah, Davis County, the
HONORABLE GLEN R. DAWSON, presiding.

TOM D. BRANCH (3997)
MARK P. HEGERMAN (7883)
Attorney for Plaintiff/Appellee
12227 South Business Park Drive
Second Floor, Suite 200
Draper UT 84020

Telephone (801) 553-1500

G. SCOTT JENSEN
Attorney for Defendant/Appellant
205 26th Street, Suite 34
Ogden UT 84401

Telephone (801) 394-5526



FILED

Utah Court of Appeals

AUG 10 1998

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Plaintiff/Appellee,)	
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vs.)	
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)	Priority No. 15
Defendant/Appellant.)	

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TOM D. BRANCH (3997)
MARK P. HEGERMAN (7883)
Attorney for Plaintiff/Appellee
12227 South Business Park Drive
Second Floor, Suite 200
Draper UT 84020

Telephone (801) 553-1500

G. SCOTT JENSEN
Attorney for Defendant/Appellant
205 26th Street, Suite 34
Ogden UT 84401

Telephone (801) 394-5526

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TOM D. BRANCH (3997)
MARK P. HEGERMAN (7883)
Attorneys for Plaintiff
12227 South Business Park
Second Floor, Suite 200
Draper UT 84020

Telephone: (801) 553-1500

IN THE UTAH COURT OF APPEALS

JULIA L. WHETMAN (LEISHMAN))	
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Plaintiff/Appellee,)	
)	
vs.)	
)	
JOHN D. WHETMAN,)	Civil No. 970642 CA
)	Priority No. 15
Defendant/Appellant.)	

BRIEF OF APPELLEE

JURISDICTION

The Court of Appeals has jurisdiction in this matter pursuant to Utah Code Annotated § 78-2a-3 (2) (h). This is an appeal from a final judgment of the Second Judicial District Court over which the Court of Appeals has original appellate jurisdiction.

STATEMENT OF ISSUES PRESENTED

As stated in his Brief before the Court, Mr. Whetman, contends that the Trial Court abused its discretion in its division of the marital assets in this case. Specifically, Mr. Whetman contends the Trial Court gave undue weight to the fact that he executed a Quit Claim Deed deeding the marital home from himself, to himself and Mrs. Whetman, as joint owners of the property. Mr. Whetman believes that the Trial Court abused its discretion when it divided equally between the parties the marital residence equity.

Accordingly, the sole issue presently before the Court is whether the Trial Court's decision to divide the equity in the marital residence equally between the parties should be disturbed.

STANDARD OF REVIEW

This Court has plainly held that "there is no fixed formula upon which to determine a division of property in a divorce action; the Trial Court has considerable latitude in adjusting financial and property interests, and its actions are entitled to a presumption of validity." Naranjo v. Naranjo. 751 P.2d 1144, 1146 (Utah App. 1988). This Court has further stated that it "will not disturb the Trial Court's decision

concerning property division unless it is clearly unjust or a clear abuse of discretion" Shepherd v. Shepherd 876 P.2d 429, 433 (Utah App 1994)(quoting Walters v. Walters, 812 P.2d 64, 66 (Utah App 1991), cert denied).

In Fletcher v. Fletcher, 615 P.2d 1218 (Utah 1980), the Supreme Court further stated:

"In a divorce case, even though the proceedings are equitable and this Court may review the evidence, this Court accords considerable deference to the findings and judgment of the Trial Court due to its advantageous position. On appeal this Court will not disturb the action of the Trial Court unless the evidence clearly preponderates to the contrary, or the Trial Court has abused its discretion, or misapplied principals of law." Fletcher at 1222.

DETERMINATIVE UTAH STATUTES

With respect to pre-marital agreements, the Uniform Pre-marital Agreement Act provides:

(1) parties to a pre-marital agreement may contract with respect to:

(a) the rights and obligations of each of the parties in any of the property of either or both of them whenever and wherever acquired or located.

U.C.A. §30-8-4 (1994).

Although the parties agreement in this case, deeding the marital home as joint property, occurred after the parties

marriage, Utah court's review postnuptial property agreements under the same standards as those applied to prenuptial agreements. See D'Aston v. D'Aston 808 P.2d 111, 113 (Utah App. 1990). Accordingly, Mrs. Whetman argues that the parties postnuptial agreement to deed the marital home as joint property is valid and enforceable under the uniform Pre-marital Agreement Act as contained in Utah Code Section 30-8-1.

STATEMENT OF FACTS

Plaintiff and Defendant were married and became husband and wife on February 18, 1994. Although Plaintiff has four (4) children from a previous marriage, and Defendant has two (2) children from a previous marriage, no children were born as issue of this marriage.

The parties separated, following marital disputes that culminated and became more severe, on June 23, 1996. As a result of the parties marital difficulties, Plaintiff filed a Complaint for Divorce on June 27, 1996.

On May 6, 1997, a Trial was held before Judge Glen R. Dawson in connection with Plaintiff's Complaint for Divorce. Following a Trial on this matter, the Trial Court granted Mrs. Whetman a Decree of Divorce based upon irreconcilable differences. Mrs. Whetman was further awarded a judgement in

her favor and against Mr. Whetman in the amount of \$53,235.50 as her share of the equity in the marital residence. See Findings of Fact at page 6.

In its Findings of Fact, the Trial Court found that, at the time of the parties' marriage, Plaintiff had pre-marital assets in the approximate amount of \$35,000.00, and Defendant had pre-marital assets in the approximate amount of \$97,000.00. See Findings of Fact at page 3. The Trial Court further found that the parties mutually agreed to join together their respective assets and to share those assets jointly and equally. Id.

In addition, the Court found that, in accordance with the parties' agreement to join and share their respective assets jointly and equally, Plaintiff left her home, job, and much of her furnishings to enter into this marriage. Id. The Court further found that Plaintiff had joined all of her pre-marital property into the joint benefit of the parties, and became the primary caretaker of all of the children; as was consistent with the desire of both parties. Id. Similarly, the Court found that Defendant joined all his assets into the marriage with the intent to share them equally with the Plaintiff. See Findings of Fact at page 3.

More specifically, the Trial Court found that Defendant knowingly and intelligently signed a Quit Claim Deed on the marital home from himself individually, to the parties equally, as joint owners. See Findings of Fact at page 4. The Trial Court expressly found that this action by the Defendant was consistent with the parties' actions in joining all of their assets into marital property. Id.

The Court found no evidence that the Defendant signed the Quit Claim Deed under coercion, force, fraud, mistake, or any other circumstance or for any other reason that would make it void, voidable, or unenforceable. Id. Furthermore, the Court found that the Defendant intended the Quit Claim Deed to have legal consequence, and that the Defendant intentionally signed the Deed after having read it, and having requested that it be prepared. Id.

The Court's findings further stated that the Court reviewed case law submitted by the parties, conducted its own research, and was aware of the Court's discretion to award an unequal division of property or to disregard legal title of a marital asset, but found no facts consistent with the case law that justified anything other than an equal split of the marital residence equity. See Findings of Fact at page 5. As a result, the Court found that the equity in the marital

residence should be divided equally, and that the Plaintiff was entitled to payment from the Defendant for her share of the equity in the marital residence in the amount of \$53,235.50.

Defendant is now appealing the Trial Court's decision to divide equally the marital residence equity.

SUMMARY OF ARGUMENT

At the time of the parties marriage, each party came into the marriage with a substantial premarital assets. Although the value of the premarital assets brought into the marriage by both parties were not entirely equal, the parties mutually agreed to join together their respective assets and to share those assets jointly and equally for the benefit of their new family.

In furtherance of this agreement, Mrs. Whetman left her job, home and furnishings, and placed all of her premarital assets into joint property of the parties. In addition to her contributing nearly \$15,000.00 as proceeds from her premarital home to the parties joint account, Mrs. Whetman also cashed in all of her premarital retirement benefits so that Mr. Whetman could invest these funds in an attempt to parlay funds into a sizeable fortune for the family's benefit. A fortune, that if

ever realized, Mr. Whetman would have surely shared in equally due to the parties agreement.

Now however, in connection with the parties divorced, Mr. Whetman contends that, in spite of ample evidence established in the parties practice of joining their assets, coupled with the fact that he deeded the marital home to the parties as joint owners sometime after they were married, he did not intend to share this premarital asset jointly or equally.

Such an argument is clearly unpersuasive in light of the clear and convincing evidence presented at Trial establishing that the parties had an agreement to commingle all their assets and share those assets jointly and equally. In light of this evidence, the Trial Court made a reasonable and proper decision to divide the equity in the marital home equally between the parties. As such the Trial Court's decision should not be disturbed upon review.

ARGUMENT

I

THE TRIAL COURT PROPERLY FOUND THAT THE INTENT OF THE PARTIES WAS TO PUT ALL THE PARTIES ASSETS INTO JOINT OWNERSHIP.

The parties were married on February 18, 1994. At the time of their marriage, each party had a significant amount of pre-marital assets. However, the evidence presented at Trial

clearly established that it was the intent and agreement of the parties, even before they were married, to commingle their assets and share those assets jointly and equally and to join their two families together as one.

At Trial it was clearly established that, in accordance with the parties mutual agreement, the parties did in fact join all of their assets together. For instance, Mrs. Whetman testified that, at Mr. Whetman's request, she left her home from a previous marriage (even though the payments on the home were being made by her former husband) and the majority of her furnishings accumulated during her previous marriage when she entered into the marriage. See Transcript at page 134-135. Furthermore, Mrs. Whetman testified that she received approximately \$14,800.00 from her former husband as her share of the equity in this pre-marital property and placed this entire amount into the parties joint checking account in furtherance of this agreement. See Transcript at page 135 and 138.

Mr. Whetman himself admitted at Trial that every asset that Mrs. Whetman owned prior to the marriage became joint property. When examined in this regard, Mr. Whetman stated:

Q BY MR. BRANCH: Answer it, isn't it true that every single assets that you know of that she owned became joint property?

A: She put in her van--

Q: We don't want to know what she put in, I am asking you, did she withhold any asset at all?

A: No.

Transcript at pp 35-36.

In addition, Mrs. Whetman testified that she also quit her job as part of the agreement between the parties to join the two families together as one, with Mrs. Whetman being the caretaker of the parties' children. See Transcript, at page 133. The evidence at Trial further established that Mrs. Whetman traded in her pre-marital vehicle for approximately \$5,500.00 and placed all of these funds into the parties' joint account as well. Id.

In fact, the only pre-marital assets of both parties that were not commingled or placed in joint ownership at the time of the marriage, or shortly thereafter, were the marital home and Mrs. Whetman's shares of stock within her 401(k) retirement account.

II

MR. WHETMAN'S SIGNING OF THE QUIT CLAIM DEED AND MRS. WHETMAN'S STOCK COMPLETED AND EVIDENCED THE JOINT OWNERSHIP AGREEMENT OF THE PARTIES

In June of 1995, approximately 16 months after the parties marriage, Mrs. Whetman's retirement benefits in the form of 442

shares of Questar stock, with an approximate value of \$13,000.00, were brokered by the parties and placed into a joint mutual fund for investment purposes. The testimony of both parties established that Mrs. Whetman's stock was brokered and the approximate \$13,000.00 was received and placed in the joint investment account so that the funds could be invested for the benefit of the parties marriage. Also during this time period, Mr. Whetman executed a Quit Claim Deed on the marital home, transferring ownership of the home from himself individually to the parties as joint tenants.

Despite Mr. Whetman's protestations after the fact, the signing of the Quit Claim Deed by Mr. Whetman, along with the brokering of Mrs. Whetman's retirement benefits, were nothing more than a completion of the parties agreement to join and share the parties assets.

For example, Mrs. Whetman testified regarding the transfer of the marital home to a joint assets as follows:

Q: All right. now, at the time you married Mr. Whetman were there any discussions as to the home that he owned?

A: Yes.

Q: Tell us about those discussions. Did any of those discussions occur before you married him?

A: Yes.

Q: Tell us what happened.

A: It was just as we talked about what we were going to do with the assets from my home and his--we just had agreed that we would join everything together, that what was mine and what was his would become ours, and that the house would become a joint asset.

Q: And so did he ever say, "No, the house is not included in that agreement but everything else is?"

A: No, as far as I am concerned he always referred to it as our home, and that's how we felt that it was our home.

Q: Now, did you do anything to effectuate that understanding at the time you married? Did you get a Deed or anything at that time?

A: Not at that time. I would mention it every once in a while and something came through the mail once in a mortgage thing about insurance for the home and stuff, and I said, "Do we need to add my name to it now?" and I would ask him every once in a while, "Well, are we ever going to--when should we put my name on the Quit Claim it", or something.

Q: What would he say when you would ask him those questions?

A: He'd say that we'd get to it that he intended to do it, always did intend to do it, that it was my house and there was no problem. And I did voice the concern the of death because I figured I would be in charge of his girls if something was to happen to him and I wanted them to have a home, I didn't want anybody out on the street.

Q: Okay, and I assume he wanted the same thing?

A: I am assuming, yeah. He said that it would be taken care of and that everything would be taken care of, to trust him.

Transcript at pp 142-143.

Mrs. Whetman further testified regarding the point in time in which the Quit Claim Deed was signed by Mr. Whetman:

Q: Tell us why we finally got to the point that a Deed was signed, what happened?

A: We were discussing turning the Questar stock over into the Charles Schwab account because it was a joint account and the certificate thus far was in my name. And I said, "Well, when we turn this over to the joint account, why don't we take care of everything at once and get the home deeded to both of us and put this in the Charles Schwab account and that way everything will be jointly owned."

Q: Everything would be done--

A: Everything would be done and basically everything would be taken care that we discussed previously.

Q: Alright, and did, what did John say when you said that?

A: He said, "Fine, call Gretchen and let's get it done."

Transcript at pp 144.

Mr. Whetman testified regarding the signing of the Quit Claim Deed as follows:

Q: . . . question on Line 18 was, "And when you signed that deed, did you have an opportunity to read that Deed." And your answer was?

A: "I suppose so."

Q: And then on Line 21 I asked you, "Did you request that it be prepared?" And your answer was?

A: "Julie and I both requested it, yes."

Q: All right. Does that refresh your memory that both of you requested this Deed be prepared, not just Julie?

A: I suppose so.

Transcript at pp 31.

Therefore, it is clear from the testimony of both parties that both the signing of the Quit Claim Deed, and the brokering of the shares of stock, were requested and executed by both parties for the benefit of the parties marriage. These actions by the parties were nothing more than a completion or continuation of the parties' agreement to join their assets and to share equally in their benefit.

III

THE QUIT CLAIM DEED EXECUTED BY MR. WHETMAN IS A VALID AND ENFORCEABLE POSTMARITAL AGREEMENT UNDER UTAH LAW

The simple fact of the matter is, in June of 1995, Mr. Whetman did in fact execute a Quit Claim Deed to the marital home transferring ownership of the property from himself individually to the parties as joint tenants. This Deed was, in and of itself, a clear and unambiguous agreement to share equally in the ownership of the property that was supported by ample consideration, and was properly enforced by the Trial Court.

This Court has clearly stated that prenuptial, as well as postnuptial, agreements are enforceable in Utah absent fraud, coercion, or material nondisclosure. See D'Aston, supra at 113. Furthermore, when interpreting such agreements, Utah Courts apply general contract principals. Id. Thus, under Utah law, a post-marital agreement should be treated like any other contract. Berman v. Berman, 749 P.2d 1271, 1273 (Utah App. 1988).

In the case at bar, the Trial Court looked to the four corners of the Quit Claim Deed to determine the intent of the parties. The Trial Court found that the language of the document clearly and unambiguously expressed the desire of the parties to share in joint ownership of the property. Moreover,

the Trial Court properly determined that ample consideration existed in support of the agreement due to the commingling of all of Mrs. Whetman's assets.

More importantly, however, is the fact that no evidence was ever presented by Mr. Whetman that the Quit Claim Deed was executed due to fraud or coercion, or that material facts were not fully disclosed to him. In fact, Mr. Whetman himself testified that both he and Mrs. Whetman requested that the Deed be prepared, that he read the Deed, that he was aware that the Deed was a legal document, that he was aware that the Deed had legal effect, and that he requested that the Deed be recorded. See Transcript at pages 30-33.

Although Mr. Whetman claimed after the fact that he was "badgered" or "harassed" by Mrs. Whetman to sign the Quit Claim Deed, the Trial Court found no evidence of fraud, or that Mr. Whetman was coerced into signing the document. Rather, the Trial Court properly found that the signing of the Quit Claim Deed was only a further manifestation of the parties mutual agreement and intent to join together their assets for the benefit of their family.

Although Mr. Whetman testified that a reason for signing the Quit Claim Deed was to provide for Mrs. Whetman and his children in the event of his death, the Trial Court found no

evidence whatsoever that the parties intended for all that was put into the marriage to somehow be divided back out in the event the parties were divorced. Instead, the Trial Court properly found that the signing of the Quit Claim Deed from himself to the parties equally, as joint owners, was consistent with the parties previous actions and agreement to join all of their assets into marital property and to join their two families together. As such, Mr. Whetman's argument that the Trial Court should have performed some sort of financial gymnastics to return the parties to their pre-marital status, just because it did not become necessary for Mrs. Whetman to care for Mr. Whetman's children, is clearly unpersuasive, unsupported by Utah law and cuts against established public policy.

IV

THE TRIAL COURT WAS NOT REQUIRED TO RESTORE THE PARTIES TO THEIR PREMARITAL STATUS

This Court has clearly stated that "there is no fixed formula upon which to determine a division of property in a divorce action." Naranjo, supra at 1146. In regard to the division of property, in a divorce action, the Supreme Court has stated:

"Pre-marital property, gifts, and inheritances may be viewed as separate property, and in appropriate circumstances, equity will require that each party

will retain the separate property brought into the marriage. However, that rule is not invariable. In fashioning an equitable property division, Trial Courts need consider all the pertinent circumstances." Burke v. Burke 733 P.2d 133, 135 (Utah 1987)(emphasis added).

Therefore, in the present case, the Trial Court was not required to restore the parties to their premarital status with respect to the division of property. Instead, the Trial Court was only required to consider all the pertinent circumstances of this case.

After hearing testimony from both parties, argument of counsel, and having considered ample amounts of additional evidence in this case concerning the relevant circumstances of the signing of the Quit Claim Deed, the Court properly determined that Mr. Whetman's execution of the Deed was consistent with the parties agreement to join assets, forces, and energies in this marriage. In support of such a finding, the Court stated as follows:

THE COURT: Well, there is evidence from Plaintiff's testimony that their agreement was that they would join assets, forces, and energies to make a good home for six children and a happy marriage for two people.

MR THOMAS: But Mr. Whetman--

THE COURT: That's fairly credible evidence to me, I have to tell you that.

MR. THOMAS: I understand.

THE COURT: I mean it's common, it's not an unnatural thing when two people get together to have that as a common goal.

THE COURT: I hear what you are saying. Let me tell you what I am having trouble with. As I view the evidence my best view is the most logical view, and I understand again, love is strange and it's not always logical, is that the evidence appears to show me that there was an agreement to work together, to join forces. The signature on the Deed, the preparation of the Deed was part of that plan. Part of the reason I am feeling that way is because I have not been given a good reason by the Defendant as to why he signed that otherwise. To say someone hounded you would not cause someone, it seems to me, reasonably to sign away something he did not want to sign away.

Transcript at pp 272-274.

These statements by the Trial Court clearly demonstrate that the Court's decision to divide equally the equity in the marital home was not made automatically or arbitrarily, or that the Court placed an inordinate amount of weights on the signing on the Quit Claim Deed. Rather, the Trial Court considered all of the evidence presented and reasonably determined that the signing of the Quit Claim Deed was consistent with the parties agreement and intent to work together. In fact, in light of all the evidence presented, any finding by the Trial Court to the contrary would have clearly been an arbitrary decision and a misapplication of Utah law.

CONCLUSION

There was more than sufficient evidence before the Trial Court to support its finding that an agreement existed between the parties to commingle their assets and to share them jointly and equally. As such, the Trial Court reasonably and properly determined that the Defendant's intentional and willful signing of the Quit Claim Deed was in furtherance of such an agreement, and that the equity from the home should therefore be divided between the parties. Such decision by the Trial Court is reasonable and proper, and should therefore not be disturbed.

ADDENDUM

Attached.

Respectfully submitted this 13 day of August 1998.

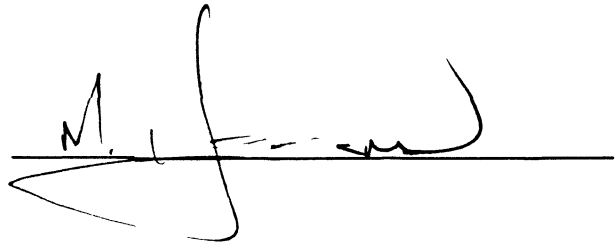


MARK P. HEGERMAN
Attorney for Plaintiff

CERTIFICATE OF MAILING

I, hereby certify that I caused a true and correct copy of the foregoing document, BRIEF OF APPELLEE to be mailed on the 13 day of August 1998, postage prepaid to:

G. Scott Jensen
FARR, KAUFMAN, SULLIVAN, GORMAN, JENSEN, MEDSKER, NICHOLS,
& PERKINS
Bamberger Square Building
205 26th Street, Suite 34
Ogden UT 84401

A handwritten signature in black ink, appearing to read "G. Scott Jensen", is written over a horizontal line.

Tab A

97-1-1

TOM D. BRANCH (3997)
 Attorney for Plaintiff
 5300 South 360 West, Suite 360
 Salt Lake City, Utah 84123
 Telephone: (801) 262-1500

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
 IN AND FOR DAVIS COUNTY, STATE OF UTAH

JULIA L. WHETMAN)	FINDINGS OF FACT AND
)	CONCLUSIONS OF LAW
Plaintiff,)	
)	
vs.)	Civil No. 964701115
)	
JOHN D. WHETMAN,)	JUDGE MICHAEL G. ALLPHIN
)	
Defendant.)	

This matter came on for Evidentiary Trial before Judge Dawson on May 6, 1997. A follow up hearing on Defendant's Objections to the Decree was held on July 13, 1997. Both parties appeared in person together with their respective counsel, Tom D. Branch for the Plaintiff and Douglas B. Thomas for the Defendant. Following the trial in the matter, the Court made the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. The parties, in January of 1997, entered into a Stipulation which was memorialized in a Pre-Trial Order signed and entered by this Court on January 16, 1997 by Judge Allphin. The terms of that Pre-Trial Order are incorporated herein and are effective as of the date of that Order and are binding on the parties.

2. Plaintiff was a bona fide resident of Davis County, State of Utah, for more than three months preceding the commencement of this action. This Court has jurisdiction and venue is proper.

3. Plaintiff and Defendant are husband and wife having been married on February 18, 1994.

4. The Plaintiff has four children from a prior marriage, ages 18, 17, 15 and 9. The Defendant has two children from a prior marriage, ages 12 and 8. There are no children born as issue of this marriage.

5. The parties separated, following marital disputes that culminated and became more severe, on June 23, 1996, and have remained separated since that time. During the course of the marriage, the parties developed irreconcilable differences making the continuation of their marriage impractical and against both their desires. The Court finds reasonable grounds for granting the

Plaintiff a divorce based upon those irreconcilable differences. A Decree of Divorce should be granted to the Plaintiff on the grounds of irreconcilable differences.

6. A Decree of Divorce should become final upon entry.

7. At the time the parties married, the Plaintiff had pre-marital assets in the approximate amount of \$35,000.00, and the Defendant had pre-marital assets in the approximate amount of \$97,000.00. The parties mutually agreed to join together their respective assets and to share those assets jointly and equally. Both parties agreed to provide all of their energies, assets, and efforts to join their two families together as one and to raise the children

8. Consistent with that agreement, the parties did join their assets together. The Plaintiff gave all she had to this marriage. The Plaintiff left her home, job, and much of her furnishings to enter into this marriage, joined all of her pre-marital property into the joint benefit of the parties, and became the primary care taker of all of the children, as was consistent with the desire of both parties.

9. The Defendant also joined his assets into this marriage with the intent to share them equally with the Plaintiff.

10. The parties took up residence in the Defendants pre-marital home which had substantial pre-marital equity at the time.

However, in June of 1995, and consistent with the parties agreement to join assets, the Defendant signed a Quit Claim Deed on the home from himself to the parties equally, as joint owners. This action by the Defendant was consistent with the parties actions in joining all of their assets into marital property, and this action transferred the home into marital property.

11 The Defendant signed the Quit Claim Deed without coercion, force, fraud, mistake, nor under any circumstance or for any reason that would make it void, voidable or unenforceable. No public policy was violated by the Defendant signing the Deed. The Court finds the Defendant could have refused to sign the Quit Claim Deed but did not. The Court finds that the Defendant executed the Deed to further the parties agreement as indicated herein and for no other reason that would cause this Court under case law to not enforce the legal impact of the Deed.

12. The Court finds that the Defendant intended the Quit Claim Deed to have legal consequence and that he expressed that he wanted to make sure that his wife and all of the children were taken care of at his death. The Defendant signed the Deed knowingly and intelligently. The Defendant intentionally signed the Deed after having read it, requested it be prepared, and knowing full well its legal consequences. There was adequate

consideration for the Deed. The Defendant asked that the Deed be recorded and the Deed was recorded.

13. The Court is not convinced that there are any facts in this case that would justify a division of the equity in the marital residence in any other percentage than equally. The Court reviewed case law submitted by the parties, conducted its own research, and is aware of the Court's discretion to award an unequal division of property or to disregard legal title of a marital asset, but finds no facts consistent with the case law that would justify anything other than an equal split of the marital residence equity.

14. The Court finds that the fair market value of the residence is \$290,000.00. The Court reviewed the testimony of the expert appraisers and all other persons testifying concerning the value and finds that equity requires that the value be set as indicated.

15. The Court finds there is a first mortgage in the amount of \$162,574.00 and a line of credit in a second secured position against the home in the amount of \$20,955.00. The Court has deducted and not given credit for the \$1,000.00 on the line of credit taken out by the Defendant after separation.

16. The Court finds that the equity to be divided in the home is \$106,471.00 and that the equity should be divided equally

and that the Plaintiff should therefore be entitled to payment from the Defendant for her share of the equity in the marital residence the amount of \$53,235.50. The Defendant should be awarded the home subject to this obligation.

17. The Plaintiff should be awarded a Judgment in the amount of the equity in the marital residence. The Defendant is awarded the residence subject to Plaintiff's judgment. The Defendant should make immediate good faith effort to refinance and should pay the Judgment as follows: A lump sum payment payable to Plaintiff and her attorney, Tom D. Branch, in the amount of \$20,000.00 due on or before the 1st day September, 1997. The balance of the Judgment should be paid on a monthly basis, for the first five (5) years with the first payment due October 1, 1997, and the full balance of the Judgment, together with interest at the now present Judgment interest rate, to be paid in full on or before September 1, 2002. The monthly payments between September 1, 1997 and September 1, 2002 should be calculated using the balance of the judgment owed after the down payment of \$20,000.00 amortized over 10 years. The Court will hold a telephone conference on September 2, 1997 at 8:30 a.m. to discuss the status of the refinance efforts.

18. The Court further finds that the Corolla automobile in question herein should be awarded to the Defendant who will be

responsible for all costs and debt related to that vehicle. The Defendant should hold harmless the Plaintiff on the Corolla debt. The Plaintiff should have deducted \$1,500.00 from her judgment on the home equity as set forth above as a contribution for her share of the Corolla debt. If there have been any double payments as the parties testified to concerning the Corolla lease payments, the Defendant shall be entitled to the credit for those overpayments.

19. Each party will be responsible to cooperate in the effectuation of this Courts ruling and in signing any and all documents necessary to put into place the effect of the Court's ruling.

20. Concerning the parties dispute on personal property, the parties are awarded the following:

TO THE PLAINTIFF

- a. All items in paragraph 2 of Plaintiff's Exhibit 4 including subparagraphs a through t.
- b. All items in Defendant's Exhibit 8 under title "Items to Julia" numbers 1 through 10

TO THE DEFENDANT

- a. All items set forth in Defendant's Exhibit 8 under "Items to John" numbers 1 through 7.

b. All other items currently in the home not otherwise specifically awarded to the Plaintiff herein.

21. The Court finds that the Defendant should immediately make available the personal property awarded to Plaintiff for her pick up. The Plaintiff should be allowed to package and remove her own property items.

22. Neither party is awarded attorney's fees and each are responsible to pay their own fees and costs in this matter. The Court finds that both of the attorney's fees were reasonable and necessarily incurred, but in light of equitable discretion, the Court finds considering the division of property set forth herein that each party should pay their own attorney's fees.

23. The Court finds that the Plaintiff has a gross income of \$1,300.00 per month and the Defendant has a gross income of \$3,300.00 per month. The Court reviewed the expenses of both parties and took those into consideration in its ruling on attorney's fees.

24. The Plaintiff should be awarded one half of the stock account in the amount \$1,150.00. If the account was in existence on November 19, 1996, Defendant should pay immediately the \$1,150.00 to Plaintiff. If the account was sold prior to November 19, 1996 as represented by Defendant the Plaintiff should

be entitled to a Judgment for the \$1,150.00 payable as an addition to the Judgment previously granted for Plaintiff's share of the home equity, and on the same terms.

25. On the foregoing Findings of Fact, the Court now makes and enters the following:

CONCLUSIONS OF LAW

1. The Court has jurisdiction over the parties and this action.

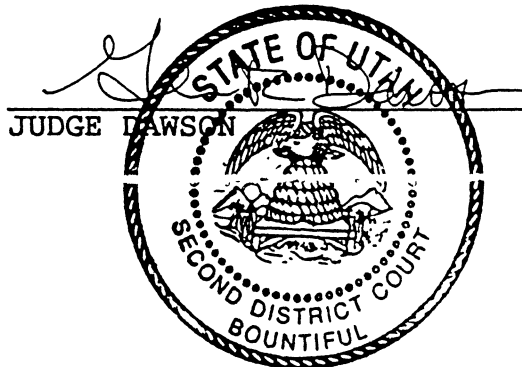
2. The Plaintiff should be awarded a Decree of Divorce to become final upon entry.

3. The Decree of Divorce should conform to these Findings and to the parties Pre-Trial Order which the Court specifically approves and incorporates herein as of its own date.

Dated this 1st day of October, 1997.

BY THE COURT:

APPROVED AS TO FORM:



DOUGLAS B. THOMAS
Attorney for Defendant

CERTIFICATE OF MAILING

Rule 4-504 Notice

You and each of you, please take notice that pursuant to Rule 4-504, Code Judicial Administration, a copy of the foregoing document has been mailed to each of you in accordance with the Certificate of Mailing. This proposed FINDINGS OF FACT AND CONCLUSIONS OF LAW will be signed and entered by the Court unless objected to within five (5) days of service of this document upon you. Any objections must be filed prior to that time.

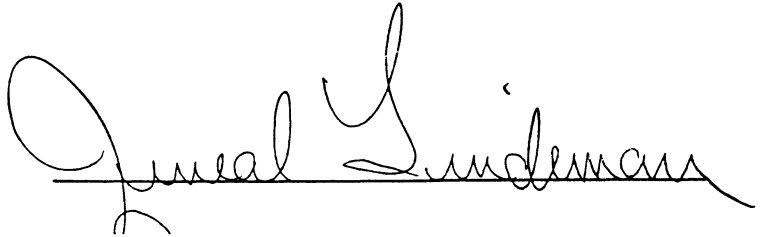
Dated this 4th day of August, 1997.


TOM D. BRANCH
Attorney for Plaintiff

CERTIFICATE OF MAILING

I, hereby certify that I mailed the foregoing document on
this 4th day of August, 1997 to:

Douglas B. Thomas
GRIDLEY, WARD, HAVAS, SHAW & THOMAS
635 25th Street
Ogden, Utah 84401



Tab B

ORIGINAL

1

IN THE SECOND DISTRICT COURT IN AND FOR THE
STATE OF UTAH, DAVIS COUNTY

-o0o-

JULIA A. WHETMAN

vs.

JOHN WHETMAN

)
)
)
)
)
)

Case No. 964701115

Trial

-o0o-

BE IT REMEMBERED that on the 6th day of May, 1997,
the above-entitled matter came on for hearing before the
Honorable Jon M. Memmott, sitting as Judge in the above-
named Court for the purpose of this cause, and that the
following proceedings were had.

-o0o-

FILED

MAR - 3 1998

COURT OF APPEALS

APR 970642-CA

ASSOCIATED PROFESSIONAL REPORTERS, L.C.

10 West Broadway Suite 200 . Salt Lake City Utah 84101 (801) 322-3441 Fax (801) 322-3443

Tab C

1 your deposition taken January 10th 1997?

2 A I do.

3 Q Do you remember being put under oath and answering
4 questions about this case?

5 A I do.

6 Q Let me show you page 21, if I could, and along the
7 left hand column are line numbers if you would look at that.
8 If you'd start, let me grab a copy of that and I'll help you
9 along with it. Question on Line 18 was, "And when you signed
10 that deed, did you have an opportunity to read that deed."
11 And your answer was?

12 A "I suppose so."

13 Q And then on Line 21 I asked you, "Did you request
14 that it be prepared?" And your answer was?

15 A "Julie and I both requested it, yes."

16 Q All right. Does that refresh your memory that both
17 of you requested this deed be prepared, not just Julie?

18 A I suppose so.

19 Q All right. Now, Mr. Whetman, isn't it true that
20 when you signed this quitclaim deed that you understood that
21 it was a legal document?

22 A Yes.

23 Q That it had legal effect?

24 A No.

25 Q You did not understand that a legal document had

no

Tab D

1 whatsoever about joining your assets together in any
2 capacity, is that your testimony?

3 A My testimony is that there's no such arrangement.

4 Q All right. Then let's talk about what actually
5 happened. Isn't it true, Mr. Whetman, that every single
6 asset that Mrs. Whetman had at the time she came into this
7 marriage was put into joint ownership?

8 MR. THOMAS: Objection, Your Honor, I need to have
9 that narrowed with respect to time.

10 MR. BRANCH: No, there's no timeframe on it.

11 MR. THOMAS: So you're just stating during the
12 marriage at some point?

13 MR. BRANCH: Yes.

14 THE COURT: Well, I thought the question as the
15 marriage she began, everything she owned was joint, but--

16 MR. BRANCH: We can break it down, that's fine. I
17 have no problem with that.

18 THE COURT: I don't mean to tell you how to try
19 your case.

20 MR. BRANCH: Well, it's kind of hard because the
21 assets kind of developed at different times; they sold the
22 van a little bit later than the date of marriage, she
23 received her money from her, you know, but--

24 THE COURT: He's withdrawn his objection, go ahead.

25 Q BY MR. BRANCH: Answer it, isn't it true that every

1 single asset that you know of that she owned became joint
2 property?

3 A She put in her van--

4 Q We don't want to put in what she put in, I'm asking
5 you, did she withhold any asset at all?

6 A No.

7 Q Let's talk about your assets for a minute. What
8 assets did you not put into joint ownership?

9 A I did not offer to give her half of my home.

10 Q Is that the only one, every other asset that you
11 had was put into joint ownership, wasn't it?

12 A Technically, no, I had a boat that I didn't put her
13 name on.

14 Q Did you sell that boat?

15 A Yes.

16 Q Did you make \$200?

17 A Yes.

18 Q Did you put that in the joint account?

19 A Yes.

20 Q All right. Anything else?

21 A I can't think of anything.

22 Q All right. And then in June of 1995 you deeded the
23 home to her as well, and you want this Court to believe that
24 you didn't intend that to be a legally enforceable document?

25 A That's correct.

Tab E

1 Q All right. Now, at the time you married Mr.
2 Whetman were there any discussions as to the home that he
3 owned?

4 A Yes.

5 Q Tell us about those discussions. Did any of those
6 discussions occur before you married him?

7 A Yes.

8 Q Tell us what happened.

9 A It was just as we talked about what we were going
10 to do with the assets from my home and his we just had agreed
11 that we would join everything together, that what was mine
12 and what was his would become ours, and that the house would
13 become a joint asset.

14 Q All right. And so did he ever say, "No, the house
15 is not included in that agreement but everything else is?"

16 A No, as far as I am concerned he always referred to
17 it as our home, and that's how we felt that it was our home.

18 Q Now, did you do anything to effectuate that
19 understanding at the time you married? Did you get a deed or
20 anything at that time?

21 A Not at that time. I would mention it every once in
22 awhile and something came through the mail once in a mortgage
23 thing about insurance for the home and stuff, and I said, "Do
24 we need to add my name to it now?" And I'd ask him every
25 once in awhile, "Well, are we ever going to--when should we

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1 put my name on the quitclaim it", or something.

2 Q What would he say when you would ask him those
3 questions?

4 A He'd say we'd get to it, that he intended to do it,
5 always did intend to do it, that it was my house and there
6 was no problem. And I did voice the concern of death because
7 I figured I would be in charge of his girls if something was
8 to happen to him and I wanted them to have a home, I didn't
9 want anybody out on the street.

10 Q Okay. And I assume he wanted the same thing?

11 A I'm assuming, yeah. He said that it would be taken
12 care of and that everything would be taken care of, to trust
13 him.

14 Q All right. He never said anything to the effect
15 that, "No, I'm not going to deed this house to you, that's
16 not the understanding?"

17 A No, no, never.

18 Q He always gave you affirmative responses?

19 A Yes, I always had the impression that he was more
20 than happy to include me in sharing his home.

21 Q In June of 1995, there was a quitclaim deed signed
22 by Mr. Whetman, recorded by Mr. Whetman's request, that
23 deeded the legal ownership of that home from him to both of
24 you, do you remember that?

25 A Yes, I do.

33

1 Q And I don't know if you have that exhibit in front
2 of you or not.

3 A I don't.

4 Q Let me show you just a copy of the quitclaim deed.

5 A Okay.

6 Q Until we can put our finger on the original, is
7 that a copy of the quitclaim deed that you understood was
8 signed in June of 1995?

9 A Yes.

10 Q Tell us why we finally got to the point that a deed
11 was signed, what happened?

12 A We were discussing turning the Questar stock over
13 into the Charles Schwab account because it was a joint
14 account and the certificate thus far was in my name. And I
15 said, "Well, when we turn this over to the joint account, why
16 don't we take care of everything at once at get the home
17 deeded to both of us and put this in the Charles Schwab
18 account and that way everything will be jointly owned."

19 Q Everything would be done--

20 A Everything would be done and basically everything
21 would be taken care of that we'd discussed previously.

22 Q All right, and did, what did John say when you said
23 that?

24 A He said, "Fine, call Gretchen and let's get it
25 done."

Tab F

1 I'd like to point out that initially Mr. Whetman
2 was also contributing things that he had, he had the travel
3 that he took the kids on, he had the tax refunds, he had his
4 checking account, all of that came in as well. I think it's
5 important to note that they didn't get together and just say,
6 "All right, we're going to make everything joined together
7 here at once." They didn't do that, that never happened.
8 There's no evidence that they ever got together and said,
9 "All right, we're going to get everything together at the
10 same time and we're going to take care of all of these
11 things." She kept the stock in her own name for a year and a
12 half.

13 THE COURT: Well, there is evidence from
14 plaintiff's testimony that their agreement was that they
15 would join assets, forces, and energies to make a good home
16 for six children and a happy marriage for two people.

17 MR. THOMAS: But Mr. Whetman--

18 THE COURT: That's fairly credible evidence to me,
19 I have to tell you that.

20 MR. THOMAS: I understand.

21 THE COURT: I mean it's common, it's not an
22 unnatural thing when two people get together to have that as
23 a common goal.

24 MR. THOMAS: But I think it is an unnatural thing
25 for someone to say, "All right, you can have in this very

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1 short term relationship one half of this \$80,000 that has
2 come from my wife's passing, that is my pre-marital
3 property." That is something that would be very unnatural to
4 take place. It was interesting to note from her testimony as
5 well, she was talking about--

6 THE COURT: Love causes one to do strange things.

7 MR. THOMAS: But that shouldn't be fair, Your
8 Honor, it should not be equitable to allow her to get this
9 huge windfall because that's all it is. She coming into this
10 marriage with very few funds and she's going out with just
11 about the same. Now, he comes in and he's got, you know, a
12 position of about \$98,000 and he's leaving with 70 even under
13 his proposal, okay? If you are to switch the tables and buy
14 into their proposal he leaves with a substantially smaller
15 amount, and that's not fair, it's not just, it's not
16 equitable particularly when he brought all of that in.
17 Suddenly all his children's inheritance basically from their
18 mother is gone, it's vanished.

19 THE COURT: I hear what you're saying. Let me tell
20 you what I'm having trouble with. As I view the evidence my
21 best view is the most logical view, and I understand again,
22 love is strange and it's not always logical, is that the
23 evidence appears to show me that there was an agreement to
24 work together, to join forces. The signature on the deed,
25 the preparation of the deed was part of that plan. Part of

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1 the reason I'm feeling that way is because I've not been
2 given a good reason by the defendant as to why he signed that
3 otherwise. To say someone hounded you would not cause
4 someone it seems to me reasonably to sign away something he
5 did not want to sign away.

6 MR. THOMAS: There was more than that with respect
7 to his testimony. I think he testified that he felt it would
8 be appropriate in case something were to happen to him to
9 make sure that his children were taken care of.

10 THE COURT: Okay, and I think he said his wife and
11 his children.

12 MR. BRANCH: That's right.

13 MR. THOMAS: So--

14 THE COURT: And if that's the case isn't that
15 further evidence of an intent to transfer? His testimony was
16 his wife and his children in case he died.

17 MR. THOMAS: I don't believe so because I think
18 that that is simply, you know, if you will, almost a form of
19 a poor man's will, if you will, where he's thinking in the
20 event something happens to me during the marriage and we're
21 doing well then I would want them to have this. But it
22 certainly wasn't his intent to convey to her his pre-marital
23 interest in the property and there is a distinction between
24 that, and I think it's a critical distinction.

25 It's also noteworthy, just a couple of real

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